IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.966 of 2007

Date of decision: **25.7.2007**

Smt. Bina Kumari Petitioner.

Versus

State of H.P. & another . Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice *V.K. Ahuja, J.*

Whether approved for reporting[1]*?*

For the petitioner: **Mr. P.C.Sharma, Advocate.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for respondents.**

Per Deepak Gupta,J.(Oral):

This petition is directed against the order of the learned Himachal Pradesh State Administrative Tribunal passed in O.A.No.2018 of 1993 whereby the Original Application filed by the petitioner has been rejected in limine.

The petitioner in her OA, had claimed that she should be declared as regularly appointed employee from the date of her initial engagement and she be paid wages as were being paid to regularly employed employees. The Tribunal has rejected her claim on the basis of the judgment passed by the Hon'ble Apex

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

Court in *Secretary State of Karnataka & others* vs. *Uma Devi and others* (2006(3) SLR 1). The law laid down by the Apex Court is very clear that a person who has not been engaged in accordance with the Rules cannot be ordered to be regularized by the Courts. The Apex Court has also held that regularization can only be ordered if there is some scheme for regularization and if a vacancy exists and not otherwise. Faced with this situation, Shri P.C.Sharmaa, learned counsel for the petitioner contended that at least the petitioner should be paid equal pay for equal work.

It would be pertinent to mention her that previously the petitioner had filed C.W.P.No.265 of 1993 when her services were disengaged on 21.9.1992. This Court passed an interim order directing the respondents to re-engage the services of the petitioner. After the petitioner was re-instated in service, the petition was disposed of. This Court went on to order that the petitioner will continue to remain in service against the same job/post from which she was disengaged and the break in service, if any, be counted for the purpose of seniority. The respondents were also directed to give her benefits other than the seniority if otherwise admissible. In fact by this order, this Court had granted the maximum relief to the petitioner.

The petitioner in her earlier writ petition filed by her, had specifically claimed the following reliefs:

i) It may kindly be held that refusal of work and consequently disengagement of petitioner by respondents as daily rated Mazdoor or Clerk is wrong, illegal, in violation of Industrial Disputes Act, 1947 and Maternity Benefit Act, 1961 and

also in violation of Articles 14,16 of the Constitution.

ii) The respondents may kindly be directed to reengage the petitioner by giving her same work which she was doing before her disengagement at Forest Range Office Surkhigulla or nearby Range within such time as this Hon'ble Court deems just and proper.

iii) The respondents may kindly be directed to ignore the period of disengagement of petitioner for purposes of seniority and continuity of employment, consequently the petitioner may kindly be given continuity of her employment and seniority.

iv) The respondents may kindly be directed to pay atleast the wages to petitioner in terms of Maternity Benefit Act, 1961.

v) The respondents may kindly be directed to pay equal wages to the petitioner for the work of Clerk she has already done in their employment from 11.10.84 onwards.

The Writ petition was disposed of in terms of the order referred to above. Some reliefs were granted to her and other reliefs were not granted. The petitioner was satisfied with the order and did not challenge the order in any other proceeding. Now after a gap of 14 years, she cannot be permitted to raise the same grounds and claim the same reliefs in fresh proceedings. The Tribunal has rightly rejected the Original Application filed by her.

The petition is dismissed with no order as to costs.

(Deepak Gupta),J

25th July, 2007 (V.K.Ahuja),J.
(SDS)